

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File No. EB-08-SE-117
	)	NAL/Acct. No. 200832100055
Centennial Communications Corp.	)	FRN No. 0003296480
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: June 17, 2008**

**Released: June 17, 2008**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Centennial Communications Corp. (“Centennial”)<sup>1</sup> apparently willfully and repeatedly violated Section 20.19(d)(2) of the Commission’s Rules (“Rules”)<sup>2</sup> by failing to include in its digital wireless handset offerings at least two models for the GSM air interface<sup>3</sup> in its mainland wireless network that meet the inductive coupling standards for hearing aid compatibility by September 18, 2006. For Centennial’s apparent violation, and for the reasons discussed below, we propose a forfeiture in the amount of forty thousand dollars (\$40,000). We also admonish Centennial for failing to include in its digital wireless handset offerings at least two models for the CDMA air interface in its Caribbean wireless network that meet the inductive coupling standards for hearing aid compatibility by September 18, 2006, in violation of Section 20.19(d)(2).

**II. BACKGROUND**

2. In the 2003 *Hearing Aid Compatibility Order*, the Commission adopted several measures to enhance the ability of individuals with hearing disabilities to access digital wireless telecommunications.<sup>4</sup> The Commission established technical standards that digital wireless handsets must

<sup>1</sup> Centennial is a Tier II carrier that operates a Code Division Multiple Access – based (“CDMA-based”) wireless network in the Caribbean and a Global System for Mobile Communications – based (“GSM-based”) wireless network in the continental United States (“mainland”) serving six states. See Centennial Communications Corp., Petition for Waiver of Section 20.19(d)(2) of The Commission’s Rules at 1, WT Docket No. 01-309, Sept. 18, 2006 (“Centennial Waiver Petition”). Tier II carriers are non-Nationwide wireless radio service providers with more than 500,000 subscribers as of the end of September 2001. See *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, Order to Stay, 17 FCC Rcd 14841, 14847 ¶¶ 22-23 (2002) (“Non-Nationwide Carrier Order”).

<sup>2</sup> 47 C.F.R. § 20.19(d)(2).

<sup>3</sup> The term “air interface” refers to the technical protocol that ensures compatibility between mobile radio service equipment, such as handsets, and the service provider’s base stations. Currently, the leading air interfaces include CDMA, GSM, Integrated Digital Enhanced Network (“iDEN”), Time Division Multiple Access (“TDMA”) and Wideband Code Division Multiple Access (“WCDMA”) a/k/a Universal Mobile Telecommunications System (“UMTS”).

<sup>4</sup> Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, Report and Order, 18 FCC Rcd 16753 (2003); Erratum, 18 FCC Rcd 18047 (2003) (“Hearing Aid Compatibility Order”); Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11221 (2005) (“Hearing Aid (continued ...)”).

meet to be considered compatible with hearing aids operating in acoustic coupling and inductive coupling (telecoil) modes.<sup>5</sup> Specifically, the Commission adopted a standard for radio frequency interference (the “U3” or “M3” rating) to enable acoustic coupling between digital wireless phones and hearing aids operating in acoustic coupling mode, and a separate standard (the “U3T” or “T3” rating) to enable inductive coupling with hearing aids operating in telecoil mode.<sup>6</sup> The Commission further established, for each standard, deadlines by which manufacturers and service providers were required to offer specified numbers or percentages of digital wireless handsets per air interface that are compliant with the relevant standard if they did not come under the *de minimis* exception.<sup>7</sup>

3. The Commission required that manufacturers and service providers begin making commercially available at least two handset models per air interface that meet the U3 or M3 rating for

(Continued from previous page ...) \_\_\_\_\_

*Compatibility Reconsideration Order*”). The Commission adopted these requirements for digital wireless telephones under the authority of the Hearing Aid Compatibility Act of 1988, codified at Section 710(b)(2)(C) of the Communications Act of 1934, as amended, 47 U.S.C. § 610(b)(2)(C).

<sup>5</sup> See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16777 ¶ 56; 47 C.F.R. § 20.19(b)(1), (2). The *Hearing Aid Compatibility Order* described the acoustic coupling and the inductive (telecoil) coupling modes as follows:

In acoustic coupling mode, the microphone picks up surrounding sounds, desired and undesired, and converts them into electrical signals. The electrical signals are amplified as needed and then converted back into electrical signals. In telecoil mode, with the microphone turned off, the telecoil picks up the audio signal-based magnetic field generated by the voice coil of a dynamic speaker in hearing aid-compatible telephones, audio loop systems, or powered neck loops. The hearing aid converts the magnetic field into electrical signals, amplifies them as needed, and converts them back into sound via the speaker. Using a telecoil avoids the feedback that often results from putting a hearing aid up against a telephone earpiece, can help prevent exposure to over amplification, and eliminates background noise, providing improved access to the telephone.

*Id.* at 16763 ¶ 22.

<sup>6</sup> Section 20.19(b)(1) provides that a wireless handset is deemed hearing aid-compatible for radio frequency interference if, at minimum, it receives a U3 rating as set forth in “American National Standard for Methods of Measurement of Compatibility between Wireless Communications Devices and Hearing Aids, ANSI C63.19-2001.” 47 C.F.R. § 20.19(b)(1). Section 20.19(b)(2) provides that a wireless handset is deemed hearing aid-compatible for inductive coupling if, at minimum, it receives a U3T rating as set forth in ANSI C63.19-2001. 47 C.F.R. § 20.19(b)(2). On April 25, 2005, the Commission’s Office of Engineering and Technology announced that it would also certify handsets as hearing aid-compatible based on the revised version of the standard, ANSI C63.19-2005. See *OET Clarifies Use of Revised Wireless Phone Hearing Aid Compatibility Standard Measurement Procedures and Rating Nomenclature*, Public Notice, 20 FCC Rcd 8188 (OET 2005). On June 6, 2006, the Commission’s Wireless Telecommunications Bureau and Office of Engineering and Technology announced that the Commission would also certify handsets as hearing aid-compatible based on the revised version of the standard, ANSI C63.19-2006. Thus, during the time period relevant here, applicants for certification could rely on either the 2001 version, the 2005 version, or the 2006 version of the ANSI C63.19 standard. See *Wireless Telecommunications Bureau and Office of Engineering and Technology Clarify Use of Revised Wireless Phone Hearing Aid Compatibility Standard*, Public Notice, 21 FCC Rcd 6384 (WTB/OET 2006). In addition, since the 2005 version, the ANSI C63.19 technical standard has used an “M” nomenclature for the radio frequency interference rating rather than a “U,” and a “T” nomenclature for the handset’s inductive coupling rating, rather than a “UT.” The Commission has approved the use of the “M” and “T” nomenclature and considers the M/T and U/UT nomenclatures as synonymous. See *Hearing Aid Compatibility Reconsideration Order*, 20 FCC Rcd at 11238 ¶ 33.

<sup>7</sup> See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780 ¶ 65; 47 C.F.R. §§ 20.19(c), (d). The *de minimis* exception provides that manufacturers or mobile service providers that offer two or fewer digital wireless handset models per air interface are exempt from the hearing aid compatibility requirements and manufacturers or service providers that offer three digital wireless handset models per air interface must offer at least one compliant model. 47 C.F.R. § 20.19(e).

radio frequency interference by September 16, 2005.<sup>8</sup> The Commission also required that manufacturers and service providers make commercially available at least two handset models per air interface that meet the U3T or T3 rating for inductive coupling by September 18, 2006.<sup>9</sup> In connection with the offer of hearing aid-compatible handset models, the Commission further required entities to label the handsets with the appropriate technical rating, and to explain the technical rating system in the owner's manual or as part of the packaging material for the handset.<sup>10</sup> In order to monitor the availability of these handsets, the Commission required manufacturers and digital wireless service providers to report every six months on efforts toward compliance with the hearing aid compatibility requirements for the first three years of implementation, and then annually thereafter through the fifth year of implementation.<sup>11</sup>

4. In a September 18, 2006 waiver request, Centennial stated that, as of the September 18, 2006 deadline, it had been unable, as a Tier II service provider, to obtain the required two U3T/T3 (inductive coupling) compliant phones from its handset distributors for either its CDMA-based Caribbean market or its GSM-based mainland market and requested a nine month extension of time, until June 18, 2007, to meet this requirement.<sup>12</sup> Specifically, it stated that compliant handsets were not widely available in sufficient quantity to permit Tier II service providers to meet the deadline.<sup>13</sup> It also noted that, as of the deadline, it offered one handset with the U3T rating in its mainland market (the LG C2000) via its website and expected to have the handset available for purchase in stores, as required by the rules,<sup>14</sup> by September 22, 2006.<sup>15</sup> In June, 2007, Centennial submitted a supplement to its waiver petition, reporting

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<sup>8</sup> See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780 ¶ 65; see also 47 C.F.R. § 20.19(c).

<sup>9</sup> See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780; see also 47 C.F.R. § 20.19(d). In addition, on February 28, 2008, the Commission released an order that, as modified on reconsideration, among other things: (a) modifies the obligation on manufacturers and service providers to offer handset models that meet the U3/M3 (radio frequency) standard, (b) increases the obligation on manufacturers and service providers to offer handset models that meet the U3T/T3 (inductive coupling) standard, (c) allows service providers other than Tier I carriers an additional three months to meet the new handset deployment benchmarks, (d) adopts a technology "refresh" requirement for manufacturers, (e) requires service providers to offer hearing aid-compatible handsets with different levels of functionality, (f) adopts an updated version of the technical standard for measuring hearing aid compatibility, and (g) requires manufacturers and service providers to submit annual reports on an open ended basis, beginning January 15, 2009. See *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, First Report and Order, 23 FCC Rcd 3406, 3408-3411, 3418 (2008) ("*Hearing Aid Compatibility First Report and Order*"), Order on Reconsideration and Erratum, 23 FCC Rcd 7249 (2008). The new rules became effective on June 6, 2008. See 73 Fed. Reg. 25,566 (May 7, 2008).

<sup>10</sup> See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16785 ¶¶ 83, 85-86; see also 47 C.F.R. § 20.19(f).

<sup>11</sup> *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16787 ¶ 89; see also *Wireless Telecommunications Bureau Announces Hearing Aid Compatibility Reporting Dates for Wireless Carriers and Handset Manufacturers*, Public Notice, 19 FCC Rcd 4097 (Wireless Tel. Bur. 2004). The Commission will now require service providers to submit annual status reports beginning January 15, 2009. See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3410 ¶ 13. Manufacturers will report on January 15, 2009, and then annually beginning July 15, 2009. *Id.* at ¶¶ 13, 101.

<sup>12</sup> Centennial Waiver Petition at 1-2.

<sup>13</sup> Centennial Waiver Petition at 3-4.

<sup>14</sup> We note that a model offered only over the internet does not count toward satisfaction of hearing aid compatibility requirements. See 47 C.F.R. § 20.19(d)(2) (Compatible models must be available "in each retail store owned or operated by the provider ... for consumers to test.").

<sup>15</sup> Centennial Waiver Petition at 2.

that it offered two U3T compliant phones in its CDMA-based Caribbean market as of January 3, 2007.<sup>16</sup> The Supplement also stated that Centennial offered the LG C2000 in the mainland market as of September 18, 2006, without addressing specifically whether or when it became available in retail stores, and it reiterated that Centennial expected to offer a second inductive coupling-compliant handset in the mainland market by June 18, 2007.”<sup>17</sup>

5. On February 27, 2008, the Commission released the *February 2008 Inductive Coupling Compatibility Waiver Order*,<sup>18</sup> addressing individually each of 46 waiver petitions filed on behalf of a total of 90 Tier III carriers, five Tier II carriers, including Centennial, one Mobile Virtual Network Operator, and one handset manufacturer for relief from the hearing aid compatibility requirements for wireless digital telephones. The Commission found that Centennial did not meet the requirements to justify a waiver under the rules.<sup>19</sup> Specifically, the Commission stated that Centennial, unlike other Tier II carriers,<sup>20</sup> failed to demonstrate unique or unusual circumstances, or the existence of any other factor, warranting grant of the requested waiver pursuant to the Section 1.925(b)(3) standard.<sup>21</sup> Further, the Commission noted that Centennial cited factors, such as lack of availability and amount of time required to test handsets, that affected all carriers and do not form an adequate basis on which to afford Centennial special relief.<sup>22</sup> Finally, the Commission found that Centennial did not demonstrate diligence in its efforts to comply with the hearing aid compatibility requirements and, consequently, that granting it a waiver would not serve the public interest.<sup>23</sup> Based on its findings, the Commission referred the apparent violation of the hearing aid compatibility requirements to the Enforcement Bureau for appropriate action.<sup>24</sup>

### III. DISCUSSION

#### A. Failure to Offer For Sale Two Hearing Aid-Compatible Handset Models

6. Section 20.19(d)(2) of the Rules requires digital wireless service providers to begin offering for sale at least two handset models for each air interface that meet at least a T3 rating for inductive coupling by September 18, 2006. Centennial stated that it offered for sale one model of T3 compliant handset, the LG C2000, for the GSM air interface in the mainland market prior to the September 18, 2006 deadline, but it apparently did so only via Internet sale.<sup>25</sup> Further Centennial stated

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<sup>16</sup> Centennial Communications Corp., Supplement to Petition for Waiver, June 1, 2007 (“Centennial Waiver Supplement”).

<sup>17</sup> *Id.* at 2.

<sup>18</sup> Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, *Petitions for Waiver of Section 20.19 of the Commission’s Rules*, Memorandum Opinion and Order, 23 FCC Rcd 3352 (2008) (“February 2008 Inductive Coupling Compatibility Waiver Order”).

<sup>19</sup> See 47 C.F.R. § 1.925(b)(3).

<sup>20</sup> See Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers, *Order to Stay*, 17 FCC Rcd 14841, 14847 ¶¶ 22-24 (2002).

<sup>21</sup> See *February 2008 Inductive Coupling Compatibility Waiver Order*, 23 FCC Rcd at 3378 ¶ 61.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Centennial Waiver Petition at 2. Centennial further stated that it would offer this model in its stores “by September 22, 2006.” *Id.* In its Supplement, Centennial reiterated that it offered the LG C2000 for sale as of (continued ...)

that it would not be able to offer a second T3 compliant GSM handset in its mainland market until June 18, 2007.<sup>26</sup> In addition, Centennial admitted that it did not offer two models of inductive coupling-compliant handsets for the CDMA air interface in the Caribbean market until January 3, 2007.<sup>27</sup> Accordingly, we conclude that Centennial apparently willfully<sup>28</sup> and repeatedly<sup>29</sup> failed to comply with Section 20.19(d)(2) of the Rules.

## B. Proposed Forfeiture

7. Under Section 503(b)(1)(B) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>30</sup> To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom such notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.<sup>31</sup> The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.<sup>32</sup> We conclude under this standard that Centennial is apparently liable for forfeiture for its apparent willful and repeated violation of Section 20.19(d)(2) of the Rules.

8. Under Section 503(b)(2)(B) of the Act,<sup>33</sup> we may assess a common carrier a forfeiture of up to \$130,000 for each violation, or for each day of a continuing violation up to a maximum of \$1,325,000 for a single act or failure to act. In exercising such authority, we are required to take into account “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, (Continued from previous page ...) \_\_\_\_\_

September 18, 2006, but it did not clarify whether that handset was available only on its website, or whether (and when) it became available in stores. Centennial Waiver Supplement at 2. *See also supra* note 14.

<sup>26</sup> *Id.* at 1. Although Centennial stated that it “hopes to meet [the] two handset U3T requirement before” June 18, 2007, according to its June 1, 2007 Supplement, it apparently did not.

<sup>27</sup> Centennial Waiver Supplement at 2.

<sup>28</sup> Section 312(f)(1) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 ¶ 5 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”).

<sup>29</sup> Section 312(f)(2) of the Act, which also applies to forfeitures assessed pursuant to Section 503(b) of the Act, provides that “[t]he term ‘repeated,’ ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2). *See Callais Cablevision, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 9 (2001); *Southern California*, 6 FCC Rcd at 4388 ¶ 5.

<sup>30</sup> 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

<sup>31</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

<sup>32</sup> *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 ¶ 4 (2002).

<sup>33</sup> 47 U.S.C. § 503(b)(2)(B). The Commission twice amended Section 1.80(b)(3) of the Rules, 47 C.F.R. § 1.80(b)(3), to increase the maxima forfeiture amounts, in accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. *See Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 15 FCC Rcd 18221 (2000) (adjusting the maximum statutory amounts from \$100,000/\$1,000,000 to \$120,000/\$1,200,000); *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 19 FCC Rcd 10945 (2004) (adjusting the maximum statutory amounts from \$120,000/\$1,200,000 to \$130,000/\$1,325,000); *see also* 47 C.F.R. § 1.80(c).



the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>34</sup>

9. The Commission’s *Forfeiture Policy Statement*<sup>35</sup> and Section 1.80 of the Rules do not establish a base forfeiture amount for violations of the hearing aid-compatible handset requirements set forth in Section 20.19 of the Rules. The fact that the *Forfeiture Policy Statement* does not specify a base amount does not indicate that no forfeiture should be imposed. The *Forfeiture Policy Statement* states that “... any omission of a specific rule violation from the ... [forfeiture guidelines] ... should not signal that the Commission considers any unlisted violation as nonexistent or unimportant.”<sup>36</sup> The Commission retains the discretion, moreover, to depart from the *Forfeiture Policy Statement* and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in Section 503 of the Act.<sup>37</sup>

10. In determining the appropriate forfeiture amount for violation of the hearing aid compatibility handset requirements, we take into account that these requirements serve to ensure that individuals with hearing disabilities have access to digital wireless telecommunications services. In adopting the hearing aid compatibility rules, the Commission underscored the strong and immediate need for such access, stressing that individuals with hearing impairments should not be denied the public safety and convenience benefits of digital wireless telephony.<sup>38</sup> Moreover, as the Commission has noted, the demand for hearing aid-compatible handsets is likely to increase with the growing reliance on wireless technology and with the increasing median age of our population.<sup>39</sup>

11. We note that recent decisions have established a base forfeiture amount of \$15,000 per handset for violations of the hearing aid compatibility handset requirements.<sup>40</sup> This base forfeiture amount was based on a determination that a significantly higher base forfeiture amount is warranted for violations of the hearing aid compatibility handset requirements than for violations of the labeling

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<sup>34</sup> 47 U.S.C. § 503(b)(2)(E). See also 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures.

<sup>35</sup> See *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

<sup>36</sup> *Forfeiture Policy Statement*, 12 FCC Rcd at 17099 ¶ 22.

<sup>37</sup> See *id.*

<sup>38</sup> *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16755 ¶ 4.

<sup>39</sup> *Id.* at 16756 ¶ 5 (noting that approximately one in ten Americans, 28 million, have some level of hearing loss, that the proportion increases with age, and that the number of those affected will likely grow as the median age increases). See also *Report on the Status of Implementation of the Commission’s Hearing Aid Compatibility Requirements*, Report, 22 FCC Rcd 17709, 17719 ¶ 20 (2007) (noting, just four years later, that the number of individuals with hearing loss in the United States was “at an all time high of 31 million – with that number expected to reach approximately 40 million at the end of this decade”).

<sup>40</sup> See *Iowa Wireless Services, LLC d/b/a i Wireless*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 4735 ¶ 12 (Enf. Bur., Spectrum Enf. Div. 2008) (“*i Wireless*”); *South Slope Cooperative Telephone Company d/b/a South Slope Wireless*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 4706 ¶ 12 (Enf. Bur., Spectrum Enf. Div. 2008); *SLO Cellular, Inc. d/b/a Cellular One of San Luis Obispo*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 3990 ¶ 15 (Enf. Bur., 2008); *Epic Touch Company*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 2831, 2835 ¶¶ 10-11 (Enf. Bur., 2008) (“*EpicTouch*”); *South Canaan Cellular Communications Company, L.P.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 20, 24-25 ¶ 11 (Enf. Bur., Spectrum Enf. Div. 2008) (“*South Canaan*”); See also *AST Telecom, LLC d/b/a Blue Sky Communications*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 2838, 2842 ¶ 10 (Enf. Bur., Spectrum Enf. Div. 2008).

requirements for wireless hearing aid-compatible handsets.<sup>41</sup> In reaching this determination, we found that a violation of the labeling requirements, while serious because it deprives hearing aid users from making informed choices, is less egregious than a violation of the handset requirements because failure to make compliant handsets available actually deprives hearing aid users from accessing digital wireless communications.<sup>42</sup> Further, because providers were required to offer at least two handset models per air interface that meet at least a T3 rating for inductive coupling, we determined that a proposed forfeiture for violation of these requirements should be applied on a per handset basis. Accordingly, we impose a base forfeiture amount of \$15,000 per handset for violation of the hearing aid compatibility handset requirements.

12. Centennial apparently did not offer any handset that met the T3 rating for inductive coupling by September 18, 2006, as required under Section 20.19(d)(2), for either its CDMA-based or its GSM-based network. While Centennial did not come into compliance with the inductive coupling handset compatibility requirements for its CDMA-based Caribbean market until January 3, 2007, we are barred from assessing a forfeiture for this violation because it is outside the one-year statute of limitations.<sup>43</sup> Accordingly, we admonish Centennial for this violation. With respect to its GSM-based network, however, we find that Centennial is apparently liable for a \$15,000 base forfeiture for failing to comply with the inductive coupling compatibility requirements in willful and repeated violation of Section 20.19(d)(2), because it did not offer a second T3 compatible handset for its GSM-based network until June 18, 2007.<sup>44</sup>

13. We find, however, that a substantial upward adjustment to this base forfeiture amount is warranted. We believe that violations of the hearing aid compatibility handset requirements by Tier II carriers are more egregious, warranting a higher forfeiture amount than that assessed against smaller Tier III carriers. Specifically, we consider that Tier II carriers' failure to timely offer compliant handsets potentially impacts and deprives more hearing aid users from accessing digital wireless communications,

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<sup>41</sup> The Enforcement Bureau has established a base forfeiture amount of \$8,000 for violation of the labeling requirements for wireless hearing aid-compatible handsets. See e.g., *South Central Utah Telephone Association, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 19251 ¶ 10 (Enf. Bur., Spectrum Enf. Div. 2007), *response pending*; *IT&E Overseas, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 7660, 7665 ¶ 10 (Enf. Bur., Spectrum Enf. Div. 2007), *response pending*.

<sup>42</sup> *South Canaan*, 23 FCC Rcd at 24.

<sup>43</sup> Under Section 503(b)(6) of the Act, 47 U.S.C. § 503(b)(6), we are prohibited from assessing a forfeiture for a violation that occurred more than a year before the issuance of a notice of apparent liability for forfeiture. Section 503(b)(6) does not, however, bar us from considering Centennial's prior conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period. See *Behringer USA, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 21 FCC Rcd 1820, 1827 (2006), *forfeiture ordered*, 22 FCC Rcd 10451 (2007) (forfeiture paid); *Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, Forfeiture Order, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-71 (2000); *Cate Communications Corp.*, Memorandum Opinion and Order, 60 RR 2d 1386, 1388 (1986); *Eastern Broadcasting Corp.*, Memorandum Opinion and Order, 10 FCC 2d 37, 37-38 (1967) *recon. denied*, 11 FCC 2d 193, 195 (1967). Accordingly, while we take into account the continuous nature of the violations in determining the appropriate forfeiture amount, our proposed forfeiture relates only to Centennial's apparent violations that have occurred within the past year.

<sup>44</sup> Although Centennial offered one T3-rated handset for its GSM-based network by September 18, 2006, it appears to have done so only via the Internet, and therefore its offering of this handset did not fulfill the requirements of Section 20.19(d)(2). However, we decline to admonish Centennial for this violation (which is beyond the applicable one-year statute of limitations) in view of the fact that the handset was offered in stores within days after being made available online.

because of their larger subscriber base.<sup>45</sup> We also consider it appropriate to set the forfeiture amount at a higher level for larger entities, such as Tier II carriers, to serve as an effective deterrent against their future non-compliance with the hearing aid compatibility handset requirements.<sup>46</sup> Finally, as we have previously noted,<sup>47</sup> a carrier's failure to offer two handsets per air interface that meet the FCC's inductive coupling compatibility requirements is a continuing violation for purposes of determining an appropriate forfeiture. Based on the foregoing, we propose a \$40,000 forfeiture against Centennial, a Tier II carrier, for failing to comply with the inductive coupling compatibility requirements in apparent willful and repeated violation of Section 20.19(d)(2).<sup>48</sup>

#### IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Section 1.80 of the Rules, Centennial Communications, Corp. **IS NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of forty thousand dollars (\$40,000) for willful and repeated violation of Section 20.19(d)(2) of the Rules for its failure to include in its digital wireless handset offerings at least two inductive coupling-compliant models for the GSM air interface in its mainland wireless network.

15. **IT IS FURTHER ORDERED** that, Centennial Communications, Corp. **IS ADMONISHED** for its failure to comply with Section 20.19(d)(2) of the Rules by failing to include in its digital wireless handset offerings at least two inductive coupling-compliant models for the CDMA air interface in its Caribbean wireless network by September 18, 2006.

16. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Centennial Communications Corp. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

17. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in

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<sup>45</sup> As the Commission noted, Centennial operates wireless networks in six states, as well as Puerto Rico and the U.S. Virgin Islands. See *February 2008 Inductive Coupling Compatibility Waiver Order*, 23 FCC Rcd at 3377.

<sup>46</sup> See *Forfeiture Policy Statement*, 12 FCC Rcd at 17099 ¶24 (recognizing that forfeitures against larger and more highly profitable communications entities must be set at higher levels “for the forfeiture to be an effective deterrent” and “not merely an affordable cost of doing business”).

<sup>47</sup> See e.g., *i Wireless*, 23 FCC Rcd at 4735 ¶ 13; *EpicTouch*, 23 FCC Rcd at 2835-36 ¶ 12 (cautioning carriers that future enforcement actions may consider all failures to comply with the hearing aid compatibility rules, including the inductive coupling requirements, as continuing violations for purposes of calculating appropriate forfeiture amounts).

<sup>48</sup> See *SunCom Wireless, Inc.*, Notice of Apparent Liability for Forfeiture, DA 08-1314 (Enf. Bur., released June 4, 2008) (finding a substantial upward adjustment to the base forfeiture warranted for larger entities, such as Tier II carriers).



block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures. Centennial Communications Corp. will also send electronic notification on the date said payment is made to [Linda.Nagel@fcc.gov](mailto:Linda.Nagel@fcc.gov) and [Ricardo.Durham@fcc.gov](mailto:Ricardo.Durham@fcc.gov).

18. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

19. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

20. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail return receipt requested to William L. Roughton, Jr., Vice President, Legal and Regulatory Affairs, Centennial Communications Corp. 3349 Route 148, Building A, Wall, New Jersey 07719, and to its counsel, Theresa Z. Cavanaugh, Esq., Davis Wright Tremaine LLP, 1919 Pennsylvania Ave NW Suite 200, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief, Enforcement Bureau